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10/027,032	12/20/2001	Douglas C. Meyer	68,143-008	2259

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HOWARD & HOWARD ATTORNEYS, P.C.  
THE PINEHURST OFFICE CENTER, SUITE #101  
39400 WOODWARD AVENUE  
BLOOMFIELD HILLS, MI 48304-5151

EXAMINER

MCCLELLAN, JAMES S

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 02/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/027,032

Applicant(s) **SW**

MEYER, DOUGLAS C.

Examiner

James S McClellan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 12-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 20 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I and Species A in Paper No. 3 (entered on 12/1/03) is acknowledged.

It is noted that Group I includes claims 1-29 and Species A includes claims 1-11. Therefore, claims 1-11 will be examined in this Office Action and claims 12-31 are non-elected.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 406 (see page 11, line 2). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The abstract of the disclosure is objected to because in line 3, "." after "record" should be replaced with --,--. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claims 4-7 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 4 recites the limitation "the step of establishing a plan" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim. It appears that claim 4 properly depends from claim 2, not claim 1. Claim 2 provides antecedent basis for "the step of establishing a plan".

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 1-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences) and therefore are found to be non-statutory subject matter. For a process, the recited process must somehow apply, involve, use, or advance the technological arts.

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In the present case, claims 1-11 fail to apply, involve, use or advance the “technological arts”. The claim must include a positive recitation of the technology required to perform the business method. Claims 1-11 may be carried out manually, hence, without progressing of science and the useful “arts”. U.S. Patent No. 5,884,300 (Brockman) may be used as an example of a typical business method claim that positively incorporates the technological arts into the claim. In Brockman, both independent claims (1 & 11) clearly identify a computer system as the technology used to implement the method.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,884,300 (Brockman).

Regarding **claim 1**, Brockman discloses a method of improving records of inventory at a facility using a computer system, comprising: assessing a plurality of current inventory records associated with the facility (see S410 and S415); responsively identifying at least one discrepancy in at least one of the current inventory records using said computer (see S430); resolving said at least one discrepancy (see column 1, lines 37-42, “self-correcting”); identifying at least one characteristic associated with the at least one inventory record (see S430); and modifying the at least one characteristic in response to the discrepancy (see column 1, lines 37-

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42); **[claim 2]** identifying at least one deficiency in the current inventory records which resulted in the at least one discrepancy; and establishing a plan to correct the at least one deficiency, the plan including specific changes to the current inventory process (see column 1, lines 37-42); **[claim 3]** the step of modifying the at least one characteristic includes one of adjusting and adding the at least one characteristic to the at least one inventory record (see column 1, lines 37-42); **[claim 4]** the step of establishing a plan includes the step of reviewing an inventory process of the facility (see step S775; Figure 5B); **[claim 5]** the plan includes the step of improving an inventory practice (it is inherent that any change to the inventory would be for improvement); **[claim 6]** the plan includes the step of improving an inventory methodology (it is inherent that any change to the inventory would be for improvement); **[claim 7]** the inventory process is a receiving process (see step 710; Figure 5A); **[claim 8]** the step of assessing current inventory records includes the step of performing a warehouse audit (see column 3, lines 20-27); **[claim 9]** the step of assessing current inventory records includes the step of performing a location audit (see column 3, lines 20-27); **[claim 10]** the step of assessing current inventory records includes the step of performing a statistical test count (see column 4, lines 22-33);

### *Claim Rejections - 35 USC § 103*

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman in view of Official Notice.

Brockman discloses all the limitations as set forth above but fails to explicitly disclose performing a statistical test count by defining a population and extrapolating data to achieve an inventory count.

The Examiner takes Official Notice that was old and well known in the art at the time the invention was made to extrapolate total inventory data based on a predetermined sample.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Brockman with inventory count extrapolation as is well known in the art, because inventory extrapolation allows an organization to statistically determine inventory quantities in manner that is faster and more efficient than a complete physical count.

### *Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Sanschagrín et al. is cited of interest for disclosing a computer system that tracks inventory and determines inventory discrepancies.

Tuma et al. is cited of interest for disclosing an inventory reconciliation for above ground storage tanks.

Antoshenkov is cited of interest for disclosing a method of random sampling.

Hoff et al. is cited of interest for disclosing an intelligent system for tracking inventory of microingredients.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jim McClellan whose telephone number is (703) 305-0212. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703) 308-5183.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

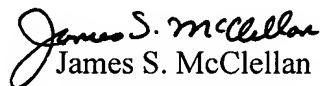
Any response to this action should be mailed to:

Commissioner of Patent and Trademarks  
Washington D.C. 20231

or faxed to:

(703) 872-9306 (Official communications) or  
(703) 746-3516 (Informal/Draft communications).

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,  
Arlington, VA, 7<sup>th</sup> floor receptionist.

  
James S. McClellan  
Primary Examiner  
A.U. 3627

jsm  
February 2, 2004